

Tim Roberts, Esq.  
DOOLEY ROBERTS & FOWLER LLP  
Suite 201, Orlean Pacific Plaza  
865 South Marine Corps Drive  
Tamuning, Guam 96913  
Telephone No. (671) 646-1222  
Facsimile No. (671) 646-1223  
roberts@guamlawoffice.com

**FILED**  
**DISTRICT COURT OF GUAM**

NOV 05 2009 *Regn*

**JEANNEG. QUINATA**  
**CLERK OF COURT**

*Attorneys for Defendant*  
*Superior Court of Guam*

IN THE DISTRICT COURT OF GUAM

DEBBIE ANN REYES PEREZ,	)	CIVIL CASE NO. CV08-00007
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>DECLARATION OF</b>
	)	<b>TIM ROBERTS</b>
SUPERIOR COURT OF GUAM,	)	
	)	
Defendant.	)	
_____	)	

1. I have personal knowledge of the matters set forth herein, and if called, I would and could testify competently thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of a Decision and Order entered in Superior Court Domestic Case No. DM1315-05, Debbie Ann Perez v. Greg Gary Hale. As noted by the Superior Court Judge, the Decision and Order, filed October 8, 2009, resulted from Ms. Perez's motion to allow her to take two of her minor children to

**ORIGINAL**


South Carolina for a year, where she told the judge that she would be on active deployment with the United States Coast Guard.

3. Attached hereto as Exhibit 2 is a true and correct copy of the signature page of Debbie Perez's EEOC charge dated May 26, 2006.

I declare under penalty of perjury that the foregoing is true and correct.

DOOLEY ROBERTS & FOWLER LLP

Dated: 11/04/09

By:   
**TIM ROBERTS, ESQ.**  
Attorneys for Defendant  
Superior Court of Guam

TLR: jvdJ144.01\Dec. of Tim Roberts (11-04-09)

OCT 16 2009

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SUPERIOR COURT  
OF GUAM

IN THE SUPERIOR COURT OF GUAM

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DEBBIE ANN PEREZ,

DOMESTIC CASE NO. DM1315-05

Plaintiff,

CLERK OF COURT  
BY \_\_\_\_\_

vs.

**DECISION AND ORDER**

GREG GARY HALE,

Defendant.

This matter came before the HONORABLE VERNON P. PEREZ on October 2, 2009 for a hearing on Plaintiff's Motion to Modify Visitation. Present at the hearing were Attorney Phillip Torres, representing Plaintiff, Debbie Ann Perez and Attorney Catherine Bejerana Camacho, representing Defendant, Greg Gary Hale. At the hearing, after having heard the Parties' arguments, considering the Parties' pleadings and the record, the Court issued a bench ruling which DENIED Plaintiff's Motion to Modify Visitation. Consistent with the bench ruling, the Court now issues the following Decision and Order.

**BACKGROUND**

The Parties were married in August, 2004 and have two minor children from the marriage, Breanne Tasi Hale, a female child born on July 15, 2000, now age 9 and Malia Rae Hale, a female child born on January 7, 2003, now age 6. The Parties were legally divorced on November 16, 2005. The Final Judgment of Divorce, by incorporating the provisions of the Divorce and Property Settlement Agreement dated October 26, 2005, provided that the Parties were awarded joint legal custody of their minor children. Plaintiff was awarded primary physical custody and Defendant was given broad and reasonable visitation. On September 26, 2007, the

1 Honorable Katherine A. Maraman modified the visitation schedule and ordered that Defendant  
2 have bi-weekly visitation with his minor children from Thursday to Sunday.

3 In July, 2008 Defendant's visitation schedule with the minor children was disrupted due  
4 to his deployment to Iraq with the United States Army. On February 13, 2009, this Court issued  
5 an Order allowing Defendant to have visitation rights with his minor children during the two  
6 week time frame that he was home on leave from his tour in Iraq. Defendant subsequently  
7 returned from his deployment in Iraq on or about August 20, 2009.

8 On or about August 24, 2009, this Court issued an Order granting Defendant temporary  
9 custody of the minor children from August 29, 2009 to October 4, 2009. The Order was based  
10 upon Plaintiff having to attend training back in the mainland with the United States Coast Guard.

11 On September 10, 2009, Plaintiff filed a Motion to Modify Visitation (hereinafter  
12 "Motion to Modify"). In the Motion to Modify, Plaintiff seeks to modify the current visitation  
13 schedule to allow her to take the two minor children to South Carolina for a year, starting on or  
14 about October 4, 2009. Plaintiff proposes that Defendant's visitation schedule with the minor  
15 children be "on summer vacations, spring vacations, Christmas holidays and, with adequate  
16 notice, whenever he is in the area where the children reside." (Plaintiff's Motion to Modify, pg.  
17 2).

18 Defendant filed Opposition to Plaintiff's Motion to Modify Visitation on September 21,  
19 2009 (hereinafter "Opposition"). In the Opposition, Defendant requests that this Court deny  
20 Plaintiff's request to remove the minor children from Guam to South Carolina. The Opposition  
21 also requests that the Court modify the award of custody previously entered and award custody  
22 of the minor children to Defendant during Plaintiff's temporary relocation to South Carolina,  
23 with rights of visitation by the Plaintiff during the period of relocation. (Opposition, pg. 8).

1 Plaintiff filed Plaintiff's Reply to Defendant's Opposition to Motion to Modify Visitation  
2 on October 1, 2009 (hereinafter "Reply").

### 3 DISCUSSION

4  
5 The Court has jurisdiction pursuant to 19 GCA § 8404. Title 19 GCA § 8404 governs  
6 child custody in divorce cases. Under section 8404(f), the Court may modify a custody  
7 arrangement whenever "the best interests of the child require or justify such modification." 19  
8 GCA § 8404(f). In rendering this decision, the Court is mindful of the legislative preference for  
9 preservation of the family life by including both parents in the lives of their children. This  
10 legislative policy is set forth more succinctly in 19 GCA § 8404(h) which provides in pertinent  
11 part:

12  
13 It is legislative policy that children spend as much time with each of their parents as  
14 possible, when the parents are not living together. Therefore, in determining visitation of  
15 minor children on Guam with non-custodial parents living on Guam, the court shall, to  
16 the greatest degree possible, order visitation for minor children...with non-custodial  
17 parents such that the children spend more or less equal amounts of time with the custodial  
18 parent and the non-custodial parent during non-working, non-sleeping, non-school  
19 time...

20 19 GCA § 8404 (h).

21 Guam case law though has clearly delineated that this legislative preference for both joint  
22 legal and joint physical custody arrangements is "always secondary to the best interests of the  
23 child." Howerton v. Howerton, 2004 Guam 8, ¶ 14; (quoting Flores v. Cruz, 1998 Guam 30,  
24 ¶12). In Howerton v. Howerton, 2004 Guam 8, ¶ 20, the Supreme Court of Guam went further in  
25 holding that when joint physical custody is awarded, the preference for equal time is also  
26 secondary to the best interests of the child. The Court set forth that in determining the allotment  
27 of custody as it relates to the child's best interest, lower courts should look to the factors set forth  
28 in 19 GCA § 8404(h) for guidance, as well as cases from other jurisdictions. Id. at ¶ ¶ 23 and 24.

1 The Court went on to set forth that the following factors, found in section 8404(h), were to be  
2 considered for a finding regarding the child's best interests: "the child's welfare, the parents'  
3 willingness to accept visitation, the parents' fitness, the child's schooling, the parents' jobs and  
4 the child's extra-curricular activities." Id. at ¶ 25.

5  
6 Having considered the statute and legislative policies set forth in Title 19 GCA § 8404, as  
7 well as relevant case law, the Court finds it is in the best interest of the minor children to stay  
8 with Defendant during Plaintiff's year long deployment to South Carolina. The Court finds that  
9 the minor children are well established on Guam and uprooting them for a year would not be in  
10 their best interests. The minor children are now settled in school and are apparently doing well.  
11 (See, Affidavit of Greg Gary Hale In Support of Defendant's Opposition to Plaintiff's Motion to  
12 Modify Visitation (hereinafter "Hale Affidavit") dated September 21, 2009, attached to the  
13 Opposition). To allow them to go to South Carolina at this point, would require them to be  
14 uprooted during this school year and once again during next year's school year when they leave  
15 South Carolina to return to Guam.

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17  
18 The Court finds that the minor children have a strong active relationship here in Guam  
19 with their immediate and extended family, in particular their paternal grandmother and aunt.  
20 Guam is the minor children's home, to uproot them for a year, would be taking the minor  
21 children from their home and the community that they have grown up in and to which the minor  
22 children have strong ties too.

23  
24 Case law from other jurisdictions lends strong support to this Court's findings. In  
25 Bingham v. Bingham, 12 So.3d 448 (La. Ct. App., 2009) the court addressed the issue of  
26 whether the trial court erred in denying a mother's request to relocate with the minor children  
27 from Louisiana to Wyoming. The mother argued that the trial court erred in evaluating the  
28

1 twelve factors enumerated in La. Rev. Stat. 9:355.12, as they applied to the case. The court found  
2 no error in the trial court's determination that the mother's proposed relocation was not in the  
3 minor children's best interest. Id. at 451-452. The court pointed to the trial court's finding that  
4 the area of Louisiana where the minor children lived was a "cocoon of love and protection with  
5 grandparents and wider family living close, which cannot be duplicated in Wyoming." Id. at 417.  
6 The court also cited to the trial court's finding that the children are happy, healthy and doing  
7 exceptionally well in school. Id. at 451-452. The court found that the trial court repeatedly  
8 focused on the best interest of the minor children and concluded that they would fare better, and  
9 continue to excel, if the request for relocation was denied. Id. at 452.  
10  
11

12 Likewise, in Charpie v. Charpie, 300 A.D. 2d 143 (N.Y. App. Div. 1, 2002), the  
13 defendant sought removal of his minor children from New York to Switzerland for one year,  
14 based on the opinions of two terrorism experts that New York was not safe following the attacks  
15 of September 11, 2001. The custody arrangement, pendente lite, of the parties provided that the  
16 children resided with each parent during alternate weeks. The court, in denying the relocation,  
17 found that the defendant had failed to show that it was in his children's best interest to attend  
18 school in Switzerland for one year. Id. at 144. The court held that such a temporary relocation  
19 would have involved a detrimental disruption in the schooling, friendships and activities that the  
20 children had continuously enjoyed for several years in New York. Id.  
21  
22

23 At the hearing in this matter, Defendant also directed this Court to the holding in Charpie  
24 v. Charpie, 300 A.D. 2d 143 (N.Y. App. Div. 1, 2002), as well as the holding in Echezarreta v.  
25 Echezarreta, 944 So. 2d 1169 (Fla. App. 3 Dist., 2006). In Echezarreta, the mother appealed from  
26 orders denying her application to relocate with the minor children and temporarily granting  
27 custody of the children to the father. Id. at 1169. The court held that the lower court did not  
28

1 abuse its discretion in requiring a change in custody to the father on an interim basis so that the  
2 children "could be-as they now have been-enrolled in school at their former home. Id. at 1170.

3 The Court also finds that based upon the record of prior proceedings that Defendant will  
4 be better able to preserve the relationship that the minor children have with their mother, the  
5 Plaintiff, through telephonic visitation and other suitable visitation schedules during school  
6 holidays. (See, Hale Affidavit).

7 The Court finds that the purported benefits and possible enhancements to the minor  
8 children's quality of life based upon the relocation to South Carolina, as argued in Plaintiff's  
9 Motion of Modify, are those that can be met during summer or Christmas vacation visits by the  
10 minor children.

11 The Court also finds that by allowing Defendant to have custody of the minor children  
12 during Plaintiff's one year deployment, is in harmony with the legislative intent found in 19  
13 GCA § 8404 (h) of equal time to be spent with each parent. For the past year, Plaintiff has had  
14 almost sole custody of the minor children, while Defendant was serving in Iraq. Allowing  
15 Defendant to have custody of the minor children while Plaintiff is serving a one year deployment  
16 with the United States Coast Guard in South Carolina provides, via military obligations, each  
17 parent equal time with their minor children. The Court recognizes that Plaintiff, in her Motion to  
18 Modify, argues that his legislative preference is not applicable given that she will be relocating  
19 for a one year deployment to South Carolina and will not be residing in Guam. The Court finds  
20 Plaintiff's position unavailing given that her relocation is for one year only and that Plaintiff will  
21 be returning to Guam thereafter.



1 Based upon the foregoing, the Court orders that Defendant be given temporary physical  
2 custody of the minor children, Breanne and Malia, until Plaintiff returns from her year long  
3 deployment in South Carolina with the United States Coast Guard.  
4

5 Plaintiff will be given reasonable visitation rights during the period of her deployment.  
6 The visitation rights will include the Christmas holiday break from the minor children's school,  
7 the Easter holiday break from the minor children's school and the entire summer vacation break  
8 from the minor children's school. For the present time, Plaintiff will be given visitation of the  
9 minor children from Sunday, October 4, 2009 until Friday, October 9, 2009 (or the date upon  
10 which Plaintiff departs Guam for South Carolina). All exchanges shall be at Erica's House. The  
11 children now attend Merizo Elementary and will need to be taken to school, each school day that  
12 Plaintiff is exercising her visitation rights.  
13

14 The Court also orders that Plaintiff shall have open and frequent telephonic visitation  
15 with the minor children during reasonable hours. The children shall also be allowed to contact  
16 Plaintiff telephonically at reasonable times.  
17

18 All matters regarding educational and medical needs and requirements of the minor  
19 children shall be communicated directly between the Parties. To that end, each Party is ordered  
20 to provide the other with appropriate telephone numbers, email addresses and mailing addresses.  
21 All other Orders not modified by the above shall remain in full force and effect.  
22

23 In closing, the Court finds that both parents equally love and want what is best for their  
24 minor children. The Court is confident that both parents will work to that end in allowing this  
25 new custody arrangement to be a successful and positive experience for their minor children.  
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**CONCLUSION**

For the reasons set forth above, Plaintiff's Motion to Modify Visitation is hereby  
**DENIED**. Defendant's Motion to Modify the Award of Custody during Plaintiff's temporary  
relocation to South Carolina is **GRANTED**. Each party shall bear its own attorneys' fees and  
costs in this matter.

OCT 08 2009  
So ORDERED this day of \_\_\_\_\_ October, 2009.

  
HONORABLE VERNON P. PEREZ  
JUDGE, SUPERIOR COURT OF GUAM

I do hereby certify that the foregoing  
is a full true and correct copy of the  
original on file in the office of the  
clerk of the Superior Court, Guam

Dated at Agaña, Guam

OCT 08 2009

  
Jacqueline S.C. Terlaja

Deputy Clerk, Superior Court of Guam

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(

☐ FEPA  
☒ EEOC

486-2006-00221

and EEC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Ms. Debbie A. Perez

Home Phone (incl. Area Code)

(671) 898-1341

Date of Birth

7/1/66

Street Address

City, State and ZIP Code

P.O. Box 1108, Hagatna, GU 96932

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

GOVT OF GUAM

No. Employees, Members

15-100-300+

Phone No. (Include Area Co

(671) 475-31

Street Address

City, State and ZIP Code

Judiciary, 120 W. O'Brien Dr., Hagatna, GU 96910

Name

No. Employees, Members

Phone No. (Include Area Co

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE    ☐ COLOR    ☒ SEX    ☐ RELIGION    ☐ NATIONAL ORIGIN  
☐ RETALIATION    ☐ AGE    ☐ DISABILITY    ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

07-01-2002

02-16-2006

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

Currently, I am a Deputy Marshall I for the Judiciary of Guam.

Since July 1, 2002 to, and including February 16, 2006, I was sexually harassed by Deputy Marshall II Alan Elce. The sexual harassment included physically grabbing me, pinning my arms to my side and forcefully kissing me or attempting to kiss me. Alan Elce made me feel uncomfortable by telling me, ".../ want you and I am going to have you."

On February 16, 2006, I filed a complaint with Deputy Marshall III F.J. Taijeron.

I believe I have been discriminated against because of my sex (female) in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

RECEIVED

JUN 01 2006

EEOC HLO

27 MAY 2006

Case 1:08-cv-00007

Document 50

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Date

Charging Party Signature